IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 3381 of 2005

Between:

Kotha Nageswara Rao, S/o.Venkataramana,
M/s.Swaroopa Enterprises, Main Road, Tallarevu, E.G.District.

..... PETITIONER

AND

1 The Commissioner of Proh & Excise, A.P.Nampally,Hyderabad.
2 The Deputy Commissioner of Proh & Excise, Kakinada,

E.G.District.
3 The Station House officer, Prohibition & Excise Station, Tallaveru,

E.G.District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of Mandamus declaring the order in CR.No.19894/2004/ CPE/D4, dt.18-12-2004 passed by the 1st respondent as illegal, unjust, arbitrary and consequently direct the respondents not to seize the petitioner's auto bearing No.AP 5Y 3928, pending disposal of the appeal before the 1st respondent.

Counsel for the Petitioner: MR.A.VEERASWAMY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court, at the stage of admission, made the following :

ORDER:

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The vehicle of the petitioner bearing No.AP 5Y 3928, was seized, on the allegation that it was involved in transporting illicit liquor. Crime No.19894 of 2004 was registered. During the pendency of proceedings, the 2nd respondent released the vehicle in favour of the petitioner through his order, dated 12.01.2004, on condition that he shall furnish bank guarantee for a sum of Rs.50,000/-. Thereafter, the 2nd respondent passed an order, dated 31.08.2004, directing confiscation of the vehicle. Aggrieved by the order of confiscation, the petitioner preferred an appeal before the 1st respondent. He also filed an application for stay. Through his order, dated 18.12.2004, the 1st respondent rejected the application for suspension of the order of confiscation. Hence, this writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Excise.

The question as to whether the order of confiscation, dated 31.08.2004, passed by the 2nd respondent, suffers from any illegality or infirmity needs to be considered by the 1st respondent in the appeal, which is now pending. It is a matter of record that the vehicle in question was released in favour of the petitioner on furnishing bank

guarantee. Appeal under any statute is almost treated as continuation of the original proceedings and the state of affairs obtaining during the pendency of the original proceedings is continued, pending the appeal also. The condition subject to which the vehicle was released can be required to be complied with.

Hence, the writ petition is disposed of directing that the petitioner shall be entitled to retain the custody of the vehicle, subject to his renewing the bank guarantee for a further period of one year, or till the disposal of the appeal by the 1st respondent, whichever is later. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Dated : 24.02.2005

Note: Furnish copy in

Three days.

(B/o)

TS

To

1 The Commissioner of Proh & Excise, A.P.Nampally,Hyderabad.
2 The Deputy Commissioner of Proh & Excise, Kakinada,

E.G.District.

3 The Station House officer, Prohibition & Excise Station, Tallaveru,

E.G.District.

4 2 CCs to G.P. for Prohibition & Excise, High Court Buildings,

Hyderabad (OUT).

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